



ISSUE BRIEF

Abortion

Key facts

- On June 24, 2022, The U.S. Supreme Court overturned *Roe v Wade (1973)*.
- This decision returns the issue to the states.
- Washington State law currently offers protections for abortions.

The debate

On March 2nd, 2022, a [Supreme Court draft majority opinion](#) was leaked, indicating the Supreme Court would likely overturn *Roe v. Wade (1973)*. That decision was [confirmed on June 24, 2022](#). Washington State Law includes protections for abortions which means this decision will not have an impact in this state. Media reports have stated Governor Inslee's desire to seek a Washington State constitutional amendment to further solidify these rights. However, no language has been made available at this time.

Background

Dobbs v. Jackson Women's Health Organization was the U.S. Supreme Court case dealing with the constitutionality of a 2018 Mississippi state law that banned abortion operations after the first 15 weeks of pregnancy. Lower courts had ruled in preliminary injunctions to prevent enforcement of the law on the basis that the law violated the holding of women's rights. Oral arguments were held in December 2021, with a final decision coming at the end of June 2022.

The two major cases that were overturned by the decision:

- *Roe v. Wade (1973)* – Ruled that the United States Constitution protects a pregnant woman's right to choose to have an abortion without excessive government restriction. The 7-2 decision stated the Due Process Clause of the Fourteenth Amendment to the United States Constitution provides a "right to privacy" that protects this right to choose.
- *Planned Parenthood v. Casey (1992)* – Upheld the right to have an abortion that was established in *Roe v. Wade (1973)* and altered the standard for analyzing restrictions on that right, crafting the undue burden standard for abortion restrictions.

The opinion states, “*Roe* was also egregiously wrong and on a collision course with the Constitution from the day it was decided. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. The Court overrules those decisions and returns that authority to the people and their elected representatives.”

While the decision to affirm the validity of the Mississippi law was decided by a 6-3 ruling, Chief Justice Roberts did not agree that *Roe* needed to be overturned to do that, therefore, the decision to overturn *Roe* had the support of 5 justices.

Washington State Abortion Law Timeline

1854 – The Washington Territorial Legislature made it illegal to “administer to any woman pregnant with a quick child any medicine, drug, or substance whatever; or use or employ any instrument or other means with intent to destroy such child, unless the same shall have been necessary to preserve the life of such mother.” ([Sec. 37, p. 81, Laws of Washington, 1854](#))

1909 – The Legislature passed a bill that made it illegal for anyone, including the prospective mother, to terminate any pregnancy unless necessary to save the life of the mother ([Chapter. 249, Session Laws, 1909](#))

1970 – Referendum 20 was approved, legalizing abortion “within the four lunar months after conception upon a woman not quick with child [advanced state of pregnancy, when the movements of the fetus can be felt].” It also stipulated women seeking abortions be residents of the state for at least 90 days and have the consent of their husbands, if they were married and living with their husbands, or the consent of their legal guardians, if they were under 18. ([Sec. 3, p. 23, Laws of Washington, 1970](#))

1991 – [Initiative 120](#) passed and it repealed Referendum 20 (1970) and replaced with “new” laws related to abortion, including RCW 9.02.110, which states: “The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health.” It went on to allow a physician to terminate and a health care provider may assist a physician in terminating a pregnancy as permitted by this section.

2022 – [HB 1851](#) prohibited the state from taking action against an individual based on pregnancy outcomes or for assisting a pregnant individual in exercising the right to reproductive freedom. It also granted specific statutory authorization for physician assistants, advanced registered nurse practitioners, and certain other providers acting within their scopes of practice to perform abortions.

Washington Current Abortion Statutes

- [9.02.005](#) – Transfer of duties to the department of health.
- [9.02.050](#) – Concealing birth.
- [9.02.100](#) – Reproductive privacy—Public policy.
- [9.02.110](#) – Right to have and provide.
- [9.02.120](#) – Unauthorized abortions—Penalty.
- [9.02.130](#) – Defenses to prosecution.
- [9.02.140](#) – State regulation.
- [9.02.150](#) – Refusing to perform.
- [9.02.160](#) – State-provided benefits.
- [9.02.170](#) – Definitions.
- [9.02.900](#) – Construction—1992 c 1 (Initiative Measure No. 120).
- [9.02.902](#) – Short title—1992 c 1 (Initiative Measure No. 120).

Resources

- History of Washington State Abortion Law - <https://www.historylink.org/File/5313>
- Chapter [9.02](#) RCW – ABORTION - <https://apps.leg.wa.gov/rcw/default.aspx?cite=9.02&full=true#9.02.100>
- Dobbs v. Jackson Women's Health Organization leaked opinion 5/2/2022-
<https://www.politico.com/news/2022/05/02/read-justice-alito-initial-abortion-opinion-overturn-roe-v-wade-pdf-00029504>
- Dobbs v. Jackson Women's Health Organization Opinion 6/24/2022 -
<https://s.wsj.net/public/resources/documents/dobbs-v-jackson-womens-health-organization-6-24-2022.pdf>